

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU

&

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

OP.No. 7524 of 1996(S)

RA NO.221/COCH/1994 IN ITA NO.333/COCH/1988 OF THE INCOME TAX
APPELLATE TRIBUNAL, COCHIN BENCH

PETITIONER:

THE COMMISSIONER OF INCOME-TAX,
COCHIN.

BY STANDING COUNSEL, GOVT. OF INDIA (TAXES)
SRI.P.K.RAVINDRANATHA MENON (SR)
SRI.GEORGE K. GEORGE, SC FOR IT

RESPONDENTS:

1. M/S.KHADER KUNJU & CO., ALWAYS.

ADDL. 2. SRI.A.K.ABDUL KAREEM, AANAKKATTU HOUSE,
ONODYMOOLA, KODIKUTHUMALA,
NEAR CHOONDY, ALUVA.

3. SMT.BUSHARA ABDUL KAREEM, W/O.SRI.A.K.ABDUL KAREEM,
AANAKKATTU HOUSE, ONODYMOOLA,
KODIKUTHUMALA, NEAR CHOONDY, ALUVA.

4. SMT.SABIRA MOHAMMED ALI,
HAMD, EDATHALA, CHOONDY, ALUVA.

(ADDL.RESPONDENTS 2 TO 4 ARE IMPEADED AS PER
ORDER DT.28.5.2007 IN IA 13909/2006)

BY ADV. SRI.P.BALACHANDRAN (SR.)
SMT.PREETHA S.NAIR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

H.L.Dattu, C.J. & K.T.Sankaran, J.

O.P.No.7524 of 1996-S

Dated, this the 31st day of July, 2007

JUDGMENT

H.L.Dattu, C.J.

The Revenue has filed this Original Petition under Section 256(2) of the Income Tax Act, 1961 ('Act' for short), inter alia, requesting us to direct the Income Tax Appellate Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.333/Coch)/1988 dated 20th July, 1994 for the assessment year 1982-83. The questions of law raised by the Revenue are as under:

“1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in interfering with the assessment of income from property for the entire period of one year?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that there can be distribution/partition of asset among the partners when the partnership is subsisting”?

(2) The Tribunal has rejected the appeal filed by the Revenue. The Revenue had filed an application under Section 256(1) of the Act requesting the Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.333/Coch)/1988 for the assessment year 1982-83. The Tribunal has rejected the application.

(3) We have carefully perused the order passed by the Tribunal and also the questions of law raised by the Revenue for consideration and decision by this Court. In our opinion, the questions of law raised by the Revenue require consideration by this Court. Therefore, a direction requires to

be issued to the Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.333/Coch)/1988 dated 20th July, 1994 for the assessment year 1982-83.

(4) Accordingly, the following:

Order

i) The petition is allowed.

ii) A direction is issued to the Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.333/Coch)/1988 dated 20th July, 1994 for the assessment year 1982-83 for consideration and decision by this Court, as expeditiously as possible.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vkul/-